

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13246, of the Publick House of Georgetown, Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Chief, Zoning Review Branch, dated March 14, 1980, denying the issuance of a certificate of occupancy for the subject premises due to the lack of off-street parking in a W-1 District at the premises 3201 K Street, N.W., (Square 1188, Lot 815).

HEARING DATE: May 21, 1980

DECISION DATE: June 4, 1980

FINDINGS OF FACT:

1. The property at issue in this appeal is located at 3201 K Street, N.W., in a W-1 District.
2. The appellant, the Publick House of Georgetown, Inc., filed an application for a Certificate of Occupancy to use the first floor and basement of the subject premises as a restaurant seating approximately 200 persons. By letter dated March 14, the Chief of the Zoning Review Branch disapproved the application, stating in pertinent part that the appellant "must provide off-street parking at the ratio of one (1) space for each 750 square feet of gross floor area."
3. A restaurant is a use permitted as a matter-of-right under Paragraph 4402.210. "Retail sales and services not specified in Sub-section 4402.3 and 4402.4" are permitted as a matter-of-right under Paragraph 4402.28.
4. The parking requirements for the Waterfront District are set forth in Section 4405. Sub-section 4405.1 contains a table listing the uses and the minimum number of parking spaces required for those uses. Among the uses listed is "retail sales or service," with a minimum requirement of "1/750 square feet of gross floor area." The last item listed in the column headed "use" is "all others," with a requirement of "none."

5. The appellant argued that the decision of the Chief of the Zoning Review Branch was incorrect, that no parking is required for a restaurant in a Waterfront District and that assuming all other requirements are satisfied, the Certificate of Occupancy should be issued.

6. The appellant argued that the column headed "uses" in the table setting forth the parking requirements in Sub-section 4405.1 must refer to the uses permitted either as a matter-of-right in Sub-section 4402.3 or as a special exception in Sub-section 4402.4. The appellant argued that the listing of a "restaurant", in Paragraph 4402.210 clearly distinguishes it from the category of "retail sales or services" in Paragraph 4402.28. The appellant argued that the distinction should be carried over to Sub-section 4405.1, and that the "restaurant" use, not being included in the "retail sales or services" category must therefore fit into the "all others" category.

7. The appellant further argued that the intent of the Zoning Commission was to reduce the amount of vehicular traffic generated by the uses in the Waterfront District, and that that goal was to be achieved by lowering the minimum parking requirements for facilities in the Waterfront District. The appellant argued that accepting the decision of the Chief of the Zoning Review Branch would be contrary to the intent of the Commission by requiring more parking.

8. The Deputy Zoning Administrator argued that in all other parking requirements set forth in Section 7201 and 7301, a restaurant is considered a retail sale or service establishment. That interpretation is based upon the listing in the C-1 District, where a restaurant is included as a retail establishment in Paragraph 5101.33. The Deputy Zoning Administrator further argued that the intent of the Regulations was unclear, and that he would apply a stricter standard in case of a doubt, until overruled by the Board.

9. There was no report from Advisory Neighborhood Commission - 3A.

CONCLUSIONS OF LAW AND OPINION:

Upon review of the record, the Zoning Regulations and the facts set forth above, the Board concludes that the appellant is correct, that no parking is required for a restaurant in a Waterfront District and that assuming all other conditions are met, the Certificate of Occupancy should be issued.

The Board is persuaded by the Commission's specific designation of a "restaurant", as a use permitted as a matter-of-right, outside of the general category of "retail sales or services." Accepting the argument of the Deputy Zoning Administrator would render that distinction meaningless. While the Board is unable from this record to clearly establish the intent of the Zoning Commission, the Board concludes that the clear letter of the regulations distinguished between a restaurant and "retail sales or services," and that that distinction must be carried over to the parking requirements in Sub-section 4405.1. The Board therefore concludes that a "restaurant" must fall into the category of "all other" uses, rather than "retail sales or services." It is indisputable that the "all other" category requires no parking.

The Board notes the clear distinction between the uses permitted in the Waterfront District and the uses permitted in Commercial Districts, upon which the Deputy Zoning Administrator relied. In Paragraph 5101.33 a restaurant is included in the "retail sales" category; in Sub-section 4402.3 it is clearly not included.

It is therefore hereby ORDERED that the appeal is GRANTED, that the decision of the Chief of the Zoning Review Branch is REVERSED and that the Certificate of Occupancy for restaurant use shall be APPROVED assuming that all other requirements necessary for the issuance of that certificate are met.

VOTE: 4-0 (John G. Parsons, William F. McIntosh, Connie Fortune and Leonard L. McCants to GRANT; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER

Executive Director

FINAL DATE OF ORDER: 20 AUG 1980

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."